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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Australia,* Austria,* Belgium, Bosnia and Herzegovina,* Bulgaria,* Costa Rica,* Croatia, France,* Georgia, Germany, Honduras,* Hungary, Ireland,* Italy,* Latvia, Lithuania,* Luxembourg,* Mexico,* Montenegro,* Panama, Peru,* Poland,* Portugal, Romania,* Serbia,* Slovakia,* Slovenia, Spain,* the former Yugoslav Republic of Macedonia,* United Kingdom of Great Britain and Northern Ireland, Uruguay:* draft resolution

36/... Conscientious objection to military service

The Human Rights Council,

Bearing in mind that everyone is entitled to all the rights and freedoms set forth in the Universal Declaration of Human Rights without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Reaffirming that it is recognized in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights that everyone has the right to life, liberty and security of person, as well as the right to freedom of thought, conscience and religion and the right not to be discriminated against,

Reaffirming also that the right to freedom of thought, conscience and religion shall include freedom to have or to adopt a religion or belief of one's choice, and freedom, either individually or in community with others and in public or private, to manifest one's religion or belief in worship, observance, practice and teaching, and that no one shall be subject to coercion that would impair one's freedom to have or to adopt a religion or belief of one's choice, as well as that freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others,

* State not a member of the Human Rights Council.

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Recalling article 14 of the Universal Declaration of Human Rights, which recognizes the right of everyone to seek and enjoy in other countries asylum from persecution,

Recalling also all previous relevant resolutions and decisions, including Human Rights Council resolutions 20/2 of 5 July 2012 and 24/17 of 27 September 2013 and Commission on Human Rights resolutions 1998/77 of 22 April 1998 and 2004/35 of 19 April 2004, in which the Commission recognized the right of everyone to have conscientious objection to military service as a legitimate exercise of the right to freedom of thought, conscience and religion, as laid down in article 18 of the Universal Declaration of Human Rights, article 18 of the International Covenant on Civil and Political Rights and Human Rights Committee general comment No. 22 (1993) on the right to freedom of thought, conscience and religion,

Taking note of Human Rights Committee general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, in which the Committee stated that repeated punishment of conscientious objectors for not having obeyed a renewed order to serve in the military based on the same constant resolve may amount to punishment in breach of the legal principle *ne bis in idem*,

Recognizing that conscientious objection to military service derives from principles and reasons of conscience, including profound convictions, arising from religious, ethical, humanitarian or similar motives,

Aware that persons performing military service may develop conscientious objections,

1. *Recognizes* that the right to conscientious objection to military service can be derived from the right to freedom of thought, conscience and religion or belief;

2. *Takes note with appreciation* of the analytical report on conscientious objection to military service presented by the Office of the United Nations High Commissioner for Human Rights to the Human Rights Council at its thirty-fifth session,[1] pursuant to resolution 20/2;

3. *Encourages* all States, relevant United Nations agencies, programmes and funds, intergovernmental and non-governmental organizations and national human rights institutions to cooperate fully with the Office of the High Commissioner by providing relevant information for the preparation of the next quadrennial analytical report on conscientious objection to military service, in particular on new developments, best practices and remaining challenges;

4. *Recalls* the publication in 2012 by the Office of the High Commissioner of the guide *Conscientious Objection to Military Service*;

5. *Acknowledges* that an increasing number of States recognize conscientious objection to military service not only for conscripts but also for those serving voluntarily, and encourages States to allow applications for conscientious objection prior to, during and after military service, including reserve duties;

6. *Recognizes* that an increasing number of States that retain compulsory military service are taking steps to ensure the establishment of alternatives to military service;

[1] A/HRC/35/4.

7. *Welcomes* the fact that some States accept claims of conscientious objection to military service as valid, without inquiry;

8. *Calls upon* States that do not have such a system to establish independent and impartial decision-making bodies with the task of determining whether a conscientious objection to military service is genuinely held in a specific case, taking account of the requirement not to discriminate between conscientious objectors on the basis of the nature of their particular beliefs;

9. *Affirms* that after any decision on conscientious objector status there should always be a right to review by a competent, independent and impartial tribunal established by law;

10. *Urges* States with a system of compulsory military service, in which such provision has not already been made, to provide for conscientious objectors various forms of alternative service that are compatible with the reasons for conscientious objection, of a non-combatant or civilian character, in the public interest and not of a punitive nature;

11. *Recommends* that States reduce the length of alternative civilian service to that of military service, or at least to reduce the difference of their duration;

12. *Emphasizes* that States should take the necessary measures to refrain from subjecting individuals to imprisonment solely on the basis of their conscientious objection to military service and to repeated punishment for refusing to perform military service, and recalls that repeated punishment of conscientious objectors for refusing a renewed order to serve in the military may amount to punishment in breach of the legal principle *ne bis in idem*;

13. *Calls upon* States to release individuals imprisoned or detained solely on the basis of their conscientious objection to military service and to consider expunging the corresponding charges from their criminal records;

14. *Reiterates* that States, in their law and in practice, must not discriminate against conscientious objectors in relation to their terms or conditions of service, or any economic, social, cultural, civil or political rights;

15. *Encourages* States, subject to the circumstances of the individual case meeting the other requirements of the definition of a refugee as set out in the Convention relating to the Status of Refugees of 1951 and the Protocol thereto of 1967, to consider granting asylum to those conscientious objectors to military service who have a well-founded fear of persecution in their country of origin owing to their refusal to perform military service when there is no provision, or no adequate provision, for conscientious objection to military service;

16. *Also encourages* States, as part of post-conflict peacebuilding, to consider granting and effectively implementing, amnesties and restitution of rights, in law and in practice, for those who have refused to undertake military service on grounds of conscientious objection to military service;

17. *Affirms* the importance of the availability of information about the right to conscientious objection to military service, and the means of acquiring conscientious objector status, to all persons affected by military service;

18. *Welcomes* initiatives to make such information widely available, and encourages States, as applicable, to provide information to conscripts and persons serving voluntarily in the military services about the right to conscientious objection to military service;

19. *Urges* States to respect the freedom of expression of those who promote the protection of the rights of conscientious objectors or who advocate for the right of conscientious objection to military service;

20. *Encourages* States to use the information contained in the quadrennial reports and the publication of the Office of the High Commissioner and in the present resolution as a basis for reviewing existing policy and practice and to guide the introduction of appropriate legislation, policies and practices regarding conscientious objection to military service, to address any discriminatory provisions therein, and to inform the enforcement of an adequate legal framework to ensure that the right can be respected in practice;

21. *Invites* States to consider including in their national reports, to be submitted under the universal periodic review mechanism and to human rights treaty bodies, information on national provisions related to the right to conscientious objection;

22. *Requests* the Office of the High Commissioner to prepare, in consultation with all States and the relevant intergovernmental organizations, United Nations agencies, funds and programmes, special procedures, treaty bodies, national human rights institutions and non-governmental organizations, a report on different approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards, and to present the report to the Human Rights Council at its forty-first session;

23. *Decides* to continue consideration of this matter under the same agenda item in accordance with its annual programme of work.